

ORDINANCE 15-04

To Repeal "The Zoning Procedures And Standards Ordinance Of The City of Dalton," Adopted May 15, 2006 As Amended In Its Entirety And To Substitute In Lieu Thereof "The Unified Zoning Procedures and Standards Ordinance" As Follows; To Provide An Effective Date; To Repeal All Conflicting Ordinances; To Provide For Severability; And For Other Purposes.

BE IT ORDAINED by the Mayor and Council of the City of Dalton in regular meeting and by authority of the same it is hereby ordained as follows:

Section 1-1

Preamble and Enactment Clause

For the purpose of ensuring that due process is afforded to the general public of Dalton, Georgia, when Dalton, Georgia, regulates the use of property through the exercise of zoning power, and pursuant to the authority and mandates of Chapter Sixty Six of Title Thirty Six of the Official Code of Georgia Annotated (O.C.G.A. § 36-66-1 et. seq.), Dalton, Georgia does hereby adopt, order, and enact into law this Ordinance.

Section 1-2

Short Title

This Ordinance shall be known and may be cited as "The Unified Zoning Procedures and Standards Ordinance".

Section 1-3

Definitions

As used within this Ordinance, the following terms shall have the definitions and meanings hereinafter set forth.

Section 1-3.1 "COMMISSION" Commission shall mean the Dalton Whitfield County Planning Commission.

Section 1-3.2 "GOVERNING AUTHORITY" Governing Authority means the group of officials responsible for governance of a governmental entity located within the territorial boundaries of Whitfield County.

Section 1-3.3 "GOVERNMENTAL ENTITY" Governmental entity means the City of Dalton, the City of Varnell, or the unincorporated areas of Whitfield County, as the case may be.

Section 1-3.4 "SPECIAL USE" Special Use means a land use which is not allowed in a particular zoning district or in any zoning district because of the inherent and special characteristics of the land use in relationship to the land use of surrounding areas to the subject property.

Section 1-3.5 "LOCAL GOVERNMENT" Local government means the governing authority which exercises zoning power within its territorial boundaries.

Section 1-3.6 "TERRITORIAL BOUNDARIES" Territorial boundaries means the respective corporate boundaries of the governmental entities within Whitfield County and the unincorporated areas of Whitfield County, as the case may be.

Section 1-3.7 "ZONING" Zoning means the power of the governing authority to provide within its respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.

Section 1-3.8 "ZONING ADMINISTRATOR" The official designated by the governing authority to manage, administer and coordinate enforcement of the Zoning Ordinance on behalf of the governing authority.

Section 1-3.9 "ZONING DECISIONS" Zoning decision means final action by the governing authority which results in:

- (a) the adoption of a zoning ordinance;
- (b) the adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;
- (c) the adoption of an amendment to a zoning ordinance and/or zoning map which rezones property from one zoning classification to another;
- (d) the adoption of an ordinance annexing a land into the city with a specified zoning classification; or
- (e) the adoption of a Special Use.

Section 1-3.10 "ZONING ORDINANCE" Zoning Ordinance means an ordinance of the governing authority establishing procedures and zones or districts within its respective territorial boundaries which regulate the uses and development standards of property within such zones or districts. The term also includes the Unified Zoning Map of Whitfield County (as hereinafter amended) adopted in conjunction with the Unified Zoning Ordinance of Whitfield County, which shows the zones and districts and zoning classification of property therein.

Section 1-4

Procedures for Amendment to the Zoning Ordinance Text, Application for a Special Use, and/or Amendment to the Zoning Map

The text of the Zoning Ordinance and the Zoning Map may be amended from time to time and Special Uses may be granted, subject to the following conditions and procedures contained herein:

Section 1-4.1 An amendment to the Zoning Ordinance and/or Zoning Map or application for Special Use shall not become effective unless initiated or requested by the governing authority, the property owner(s) of the particular parcel affected by the Zoning Ordinance and/or Zoning Map, or any individual who has written power of attorney of a property owner of the particular parcel affected by the Zoning Ordinance and/or Zoning Map, or a request signed by sixty percent (60%) of the property owners who own legal or equitable title to not less than sixty percent (60%) of the affected land requested to be rezoned or for which a Special Use is sought. All governing authorities that have adopted the Zoning Ordinance and this Ordinance shall confer not less than thirty (30) days before initiating an amendment to the text of the Zoning Ordinance or this Ordinance.

Section 1-4.2 Any proposed Amendment to the Zoning Ordinance and/or Zoning Map or application for a Special Use shall be initiated by an application submitted to the staff of the Zoning Administrator upon forms provided by the Zoning Administrator.

Section 1-4.3 Upon the submission of an application for an Amendment to the Zoning Ordinance and/or Zoning Map or application for Special Use, the person or

persons submitting such application shall pay an administrative fee.

Section 1-5

Public Notice of Proposed Amendments to the Zoning Ordinance and/or Zoning Map and/or Application for a Special Use

Public notice of hearings upon a proposed Amendment to the Zoning Ordinance and/or Zoning Map and/or proposed Special Use shall be given as hereinafter set forth:

Section 1-5.1 At least fifteen (15) but not more than forty five (45) days prior to the date set by the Dalton Whitfield Planning Commission for a public hearing, a written notice shall be published in a newspaper of general circulation within the territorial boundaries of Whitfield County, State of Georgia, setting forth the time, place, and purpose of the hearing.

Section 1-5.2 In addition to the requirements of subsection 1-5.1, if the proposed amendment to the Zoning Ordinance and/or Zoning Map or proposed Special Use calls for a zoning decision for the rezoning of a lot or parcel or for the granting of a Special Use thereon, and the proposed Amendment or proposed Special Use is initiated other than by the governmental authority, the following additional conditions apply:

(a) The published notice shall include the general location of the lot or parcel and shall state the present zoning classification of the lot or parcel and the proposed zoning classification of the lot or parcel or proposed Special Use sought.

(b) A sign shall be placed by the Zoning Administrator in a conspicuous location upon the lot or parcel sought to be rezoned or for which a Special Use is sought, setting forth the time, place, and purpose of the public hearing, the present zoning classification of the lot or parcel, and the proposed zoning classification or proposed Special Use. Acts of vandalism or natural occurrences limiting the effectiveness of such notice shall not invalidate any proceeding or action taken upon the proposed amendment.

(c) For subject properties within the unincorporated area of Whitfield County, the Zoning Administrator shall reasonably attempt to notify each owner of a lot or parcel abutting and/or adjoining the subject property proposed for amendment to the Zoning Map or Special Use by mailing to

each such adjoining owner a copy of the application for amendment to the Zoning Map or Special Use by regular United States mail. In determining the name, address and ownership of each abutting and/or adjoining lot or parcel entitled to notice, the Zoning Administrator or its designee may conclusively rely upon the records of the office of the Whitfield County Tax Assessor as of the date of the filing of the application for amendment to the Zoning Map or application for Special Use with the Zoning Administrator. The Zoning Administrator's office may place reasonable requirements upon the applicant to assist in obtaining accurate information concerning adjoining owners and shall require the applicant to reimburse actual mailing costs. The determination by the Zoning Administrator that the requirements of this Section 1-5.2(c) have been satisfied shall be final.

Section 1-6

Public Hearing for Amendments to the Zoning Ordinance and/or Zoning Map and for Special Use Approval

A public hearing upon any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use shall be provided for by the Dalton Whitfield Planning Commission. A public hearing upon any proposed Amendment to the Zoning Ordinance and/or Zoning Map of Whitfield County or Special Use properly initiated shall be conducted at the time and place as set forth in subsection 1-5.1. Any affected governmental authority may, at its discretion, join the Dalton Whitfield County Planning Commission during the public hearing process, such that both bodies simultaneously are present for such public hearing(s). The City of Dalton delegates to the Dalton-Whitfield County Planning Commission the authority to conduct any public hearing required by O.C.G.A. §36-66-4. The Chairman of the Dalton-Whitfield County Planning Commission shall conduct such public hearing(s), unless he or she shall designate that another person shall serve as Chair of the proceedings for such public hearing(s). The purpose of such public hearing(s) shall be to present to the public any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use and to receive comments thereon from the public. The governing authority shall consider the comments presented by the public at such public hearing(s) in making their respective decisions on the proposed amendment to the Zoning

Ordinance and/or Zoning Map or Special Use in accordance with the standards as enumerated in Section 1-8 or 1-9 of this Ordinance, as applicable.

Section 1-7

Conduct and Procedures of Public Hearings Held Before the Whitfield County Board of Commissioners and the Dalton Whitfield County Planning Commission

The following policies and procedures shall govern the conduct of hearings before the Dalton Whitfield County Planning Commission and the governmental authority if jointly convened (the joint hearing body is hereinafter, the "joint panel").

Section 1-7.1 The Chairman of the Dalton-Whitfield County Planning Commission or his or her designee (hereinafter, "the Chair") shall open the hearing(s) with an explanation of the purpose of the hearing(s) and a description of the general rules for the conduct of the hearing(s). The Chair may describe the authority and role of both the Dalton Whitfield County Planning Commission, in providing a recommendation only, and of the governmental authority, for final action, in any zoning decision. An individual requesting to be heard upon a matter germane to the purpose of the hearing must be called and recognized by the Chair before addressing the joint panel. The Chair shall determine the germaneness of any proposed comment or presentation and is authorized to rule any individual or portion of the presentation out of order if not germane to the published purpose of the hearing. Any person recognized by the Chair, shall first state his name and residence address before proceeding with any comment, remarks, or presentation. Any person addressing the joint panel shall respond to questions from the Chair or anyone he or she shall recognize. The Chair may predetermine the length of any hearing, allotting equal time to proponents and opponents of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use to the extent that there are both proponents and opponents who desire to be heard. The Chair shall be required to offer equal time to both the proponents and opponents of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use and the fact that equal time is not in fact utilized by either shall not invalidate any proceeding or action taken upon any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use. The Chair, however, shall allow a minimum time period no less than ten (10) minutes per side for the presentation of data, evidence, and opinion.

Section 1-7.2 A proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use applications may be called in any order in the discretion of the Chair. The Chair shall confirm that proper public notice of the public hearing(s) in accordance with the provisions of this article has been given prior to taking any comments from the public.

Section 1-7.3 The Chair shall allow the person initiating the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use, or his or her designee (hereinafter, "the applicant,") to present a description of the request and the reason(s) supporting it. The failure of the applicant to be present for the hearing when called shall result in an automatic continuance in the public hearing thereon until the next regular monthly meeting of the Dalton-Whitfield County Planning Commission, with public notice thereof to all in attendance. Additionally, the Zoning Administrator shall re-post the sign setting forth the new public hearing date. The failure of the applicant to be present for the hearing when called at the next meeting of the Dalton-Whitfield County Planning Commission shall result in an automatic negative decision from the governing authority when such request shall come before it.

Section 1-7.4 The Chair shall enter into the record after the presentation of the applicant any written comment, petition or similar written statement, photographs, or any other evidence submitted during the public hearing and such documents and/or exhibits shall be considered by the Dalton-Whitfield County Planning Commission, and subsequently by the governing authority in its analysis of the relevant zoning standards and factors as set forth in Section 1-8 or 1-9 of this Ordinance, as applicable.

Section 1-7.5 The Chair shall then give persons opposed to the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use the opportunity to address the assembled panel.

Section 1-7.6 The Chair may then alternate the presentation of persons speaking in favor of and opposed to the proposal, beginning with the applicant, or the Chair may divide such presentation into blocks of time beginning with the proponents and thereafter move into the presentation of the opponents, if any. The Chair may poll the public assemblage at the hearing concerning its concurrence with the remarks of any speaker.

Section 1-7.7 Any remark amounting to an attack on the character or personal integrity of another individual or comment not actually supportable or comment in the form of emotional outburst shall be non germane to the purpose of the hearing and may be ruled out of order. The Chair shall have the power to remove or censure any person who continues to make any remarks amounting to an attack on the character or personal integrity of another individual or any comment not factually supportable or any comment in the form of emotional outburst during the proceeding.

Section 1-7.8 Upon the conclusion of the presentation of persons, if any, opposing the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use, the Chair may grant to the applicant an allotted time for rebuttal of any new issues raised by opponents, if any. The Chair may rule out of order the raising of any new issues in rebuttal unless he or she shall determine that the raising of such new issue is useful to the purpose of the hearing, in which case opponents, if any, shall be allotted an equal amount of time to address such issue(s).

Section 1-7.9 When the applicant/proponent(s) and opponents, if any, have been heard in accordance with the foregoing procedures, the Chair shall declare the public hearing closed. No further public hearing upon the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use shall be permitted prior to the final zoning decision by the governing authority, unless the governing authority shall determine that such public hearing should be re-opened for the presentation of additional information, in which case the same must be advertised in conformity with subsection 1-5.1.

Section 1-8

Zoning Standards

Exercise of zoning power by the governing authority shall constitute an effort to balance the interests of Whitfield County in promoting the public health, safety, morality, and/or general welfare against the right of lot or parcel owners to the unrestricted use of their lot or parcel. The following factors are determined to be relevant in balancing the interest and promoting the public health, safety, morality, and/or general welfare against the right to unrestricted use of lot or parcel:

Section 1-8.1 Factors for Consideration in Zoning Decision

The following factors are determined to be relevant in balancing the interests in promoting the public health, safety, morality and/or general welfare against the right to unrestricted use of property:

(a) Whether the proposed amendment would allow a use that is generally suitable for the site compared to other possible uses and the uses and zoning of adjacent and nearby properties.

(b) Whether the proposed amendment would adversely affect the economic value or the uses of adjacent and nearby properties.

(c) Whether the property has a reasonable economic use as currently zoned, considering the suitability of the subject property for the proposed zoned uses.

(d) Whether there is relative gain to the health, safety, morals, or general welfare of the public as compared to any hardship imposed upon the individual owner under the existing zoning.

(e) Whether the proposed amendment, if adopted or approved, would result in a use which would or could cause an excessive or burdensome use of existing streets, schools, sewers, water resources, police and fire protection, or other utilities, as contrasted with the impact under the existing zoning.

(f) Whether the property sought to be rezoned (or annexed) is in conformity with the policy and intent of the adopted joint comprehensive plan or equivalent. If not, has the plan already been amended, officially or unofficially, by the development of uses which are contrary to the plan recommendation, and if the plan has been amended, does this rezoning or annexation request allow uses which are compatible to the existing uses in the vicinity.

(g) Whether there are any other conditions or transitional patterns affecting the use and development of the property to be rezoned or annexed, which give grounds for approval or disapproval of the proposed zoning proposal. Whether the proposed zoning change constitutes an "entering wedge" and is a deterrent to the use, improvement, or development of adjacent property within the surrounding zone districts or would create an isolated, unrelated district (spot zone) as interpreted by current Georgia law.

(h) Whether the subject property, as currently zoned, is vacant and undeveloped for a long period of time, considered in the context of land development in the vicinity or whether there are environmental or cultural factors, like steep slopes, flood plain, storm water, or historical issues, that influence the development of the subject property under any zoning designation.

Section 1-8.2 The governing authority shall consider any proposed zoning amendment properly initiated in light of the factors set forth in section 1 8.1. In evaluating the factors set forth in 1 8.1, it shall be the policy of the governing authority to exercise its zoning power in conformity with the policy intent of the Joint Comprehensive Plan for Whitfield County and the cities of Dalton and Varnell insofar as that plan is current in its application to the specific subject lot or parcel sought to be rezoned. It is further the policy of the governing authority to exercise the zoning power for the purposes of assuring the compatibility of use of adjacent and nearby properties and the preservation of the economic value of adjacent, abutting, and nearby properties while enabling a reasonable use of all lot or parcel within the territorial boundaries of the governmental entity.

Section 1-9

Special Use Standards

As set forth in Section 10-10-1 of the Unified Zoning Ordinance, a request for a Special Use shall be duly evaluated pursuant to the following factors, which are intended to be objective in character:

Section 1-9.1 Factors for Consideration of Special Uses

- (a) Whether the proposed use would impact upon anticipated traffic volume and/or traffic flow and/or pedestrian safety within the vicinity;
- (b) Whether the hours and manner of operation of the proposed use would impact upon nearby properties and uses within the vicinity;
- (c) Whether parking, loading/service, and/or refuse areas of the proposed use would impact upon nearby properties and uses within the vicinity, particularly with regard to noise, light, glare, smoke, and/or odor;

(d) Whether the height, size, and/or location of any proposed structure is compatible with the height, size, and/or location of structure(s) upon nearby properties and uses within the vicinity;

(e) Whether the size of the lot or parcel is sufficiently large for the proposed use, and for reasonable growth opportunity of such proposed use, within the parameters of the Zoning Ordinance and within the probable limits of the soils thereon if an on site sewage system is to be installed;

(f) Whether the benefits of and need for the proposed use are, on balance, greater than reasonable anticipated depreciating effects and/or damages, if any, to nearby properties within the vicinity.

Section 1-10

Official Action by the Governing Authority

Consideration of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use properly initiated and subsequent to the public hearing(s) shall be as follows:

Section 1-10.1 After the close of all the public hearings, the Dalton Whitfield County Planning Commission shall make a recommendation, which shall later be reduced to writing, to the applicable governmental authority, as to the advisability of adoption of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use, and which shall be based upon the factors set forth in Section 1-8 or 1 9, as applicable.

Section 1-10.2 If consideration of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use shall be tabled by the Dalton Whitfield County Planning Commission, it shall be reconsidered not later than its next regular monthly meeting. Under any circumstances, however, if no recommendation shall be forthcoming within sixty (60) days of the date upon which the advertisement of the public hearing referenced in Section 1-5.1 hereinabove, it shall be deemed that the recommendation of the Dalton Whitfield County Planning Commission shall have been favorable to the request.

Section 1-10.3 The authority of the Dalton Whitfield County Planning Commission regarding any zoning decision shall be advisory only. However, the governing authority shall await either such recommendation or the sixty (60) days

referenced in Section 1-10.2 hereinabove prior to taking final action upon any such proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use.

Section 1-10.4 If the governing authority shall take official action defeating a proposed amendment to the Zoning Map which seeks to rezone a lot or parcel or Special Use, the same property may not be considered again for rezoning or for a Special Use until the expiration of twelve (12) months from the date of the official action of the governing authority. This subsection shall specifically include, but not be limited to, an automatic denial due to the failure of the applicant to appear at the public hearing when called.

Section 1-11

Annexation of Unincorporated Islands by Municipalities.

In order to accommodate the timing requirements of state law concerning the annexation of unincorporated islands, the following procedure will be used for such annexations.

Section 1-11.1 Prior submission to commission not required. Annexations of unincorporated islands, or any part thereof, to a governmental entity may be accomplished by the mayor and council without prior submission to the commission. Not less than one public hearing shall be held by the governing entity prior to the enactment of an ordinance to annex an unincorporated island or any portion thereof.

Section 1-11.2 Notice of public hearing and notice of intent to annex an unincorporated island. A public notice of the date, time, place and purpose of any public hearing precedent to the enactment of an ordinance to annex an unincorporated island or any portion thereof shall be given not less than 15 days but not more than 45 days prior to any public hearing upon the subject of the annexation of an unincorporated island or any portion thereof. Such public notice shall be published in the legal organ for Whitfield County, Georgia.

Section 1-11.3 Conduct and procedure for public hearing held precedent to the enactment of an ordinance to annex an unincorporated island or any portion thereof. Any public hearing shall be called by the mayor or his designee (hereinafter the term "mayor" shall include his designee). Any person in attendance who requests to be heard concerning any matter shall be heard, subject to the rules set forth herein, after the call to order of the public hearing. The mayor shall preside at the public hearing and may

recognize persons requesting to be heard. The mayor shall open any public hearing with an explanation of the purpose for the public hearing and a description of the general rules in conducting the public hearing. Any individual requesting to be heard on a matter germane to the purpose of the public hearing must be recognized by the mayor before addressing the governing authority. Whether any comment or presentation before the governing authority is germane to the public hearing shall be the sole determination of the mayor or his designee. The mayor is authorized to rule any person or any portion of any person's presentation out of order and not germane to the published purpose for the public hearing. Any person, upon being recognized by the mayor will give his/her name and residence address before making any comment, remark, or presentation. Any person recognized shall respond to questions from the governing authority. The mayor may predetermine the length of any hearing and allot equal time to proponents and opponents of the proposed annexation and rezoning. The fact that equal time is not utilized by either the proponents or opponents shall not invalidate any proceeding or final action taken by the governing authority. Provided, however, the proponents of annexation and the opponents of annexation shall be allowed a minimum aggregate time period of not less than ten minutes per side for presentation of data, evidence, or opinion. Any person may present written comments concerning the proposed annexation to the mayor and council by submittal to the city clerk not later than the close of the public hearing. Written comments submitted to the governing authority shall become public records available for inspection upon proper request. The city clerk will present all written comments to the governing authority for its consideration prior to final action by the governing authority on the proposed annexation.

Section 1-11.4 Enactment of an ordinance to annex an unincorporated island or any portion thereof. The governing authority will consider the enactment of an ordinance to annex an unincorporated island or any portion thereof at the next regular meeting of the governing authority following the public hearing referred to above. The governing authority may review, or have reviewed by staff, any modifications to the proposed annexation prepared as a consequence of the public hearing or public comments. In enacting any proposed ordinance to annex an unincorporated island or any portion thereof, the governing authority shall apply the standards and factors enumerated in

Section 1-10 of this Ordinance, as well as the Joint Comprehensive Plan for Whitfield County and the cities of Dalton and Varnell.

Section 1-12

Distribution

Copies of this Ordinance shall be printed and copies thereof made available for distribution to the general public in the office of the Zoning Administrator. Distribution to the general public shall be upon request of a member of the general public, who shall be entitled to one copy. The Zoning Administrator is authorized to print copies of the zoning procedures standards and Amendments thereto from time to time for the purposes compliance requirements of "The Zoning Procedure Law," (Title Thirty-Six, Chapter Sixty-Six of the Official Code of Georgia Annotated).

Section 1-13

Severability

Should any action or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional, invalid or unlawful, such declaration shall not affect the validity of the remaining portions of the ordinance not so declared to be unconstitutional, invalid, or unlawful.

Section 1-14

Repeal of Conflicting Resolutions and Ordinances

All resolutions and ordinances of the City or parts thereof in conflict herewith are hereby repealed.

Section 1-15

Effective Date

This Ordinance shall take effect and be in force as of July 1, 2015 provided The Unified Zoning Procedures and Standards Ordinance has been adopted by the Whitfield County Board of Commissioners on or before that date.

ADOPTED AND APPROVED on the _____ day of _____, 2015 at the regular meeting of the Mayor and Council.

The foregoing Ordinance received its first reading on _____ and a second reading on _____. Upon second reading a motion for passage of the

ordinance was made by Alderman _____, second by Alderman _____ and upon the question the vote is _____ ayes, _____ nays and the Ordinance is adopted.

MAYOR

Attest:

CITY CLERK

A true copy of the foregoing Ordinance has been published in two public places within the City for five (5) consecutive days following passage of the above-referenced Ordinance as of _____.

CITY CLERK
CITY OF DALTON